



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Greenbrier Industries, Inc.

**File:** B-252943

**Date:** August 11, 1993

Frank M. Rapoport, Esq., Michelle J. Morris, Esq., and Charles H. Carpenter, Esq., Pepper, Hamilton & Scheetz, for the protester.  
Darcy V. Hennessy, Esq., Moore, Bucher & Morrison, for Wichita Ponca Canvas Products, Inc., and Peter M. Kilcullen, Esq., Kilcullen, Wilson & Kilcullen, for Camel Manufacturing Company, interested parties.  
Lynne Georges, Esq., Defense Logistics Agency, for the agency.  
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly rated protester's proposal below those of the two awardees where protester had greater past and current contract delinquency problems, and those problems could have a negative effect on protester's ability to perform as promised in its proposal.

### DECISION

Greenbrier Industries, Inc. protests the award of contracts to Wichita Ponca Canvas Products, Inc. and Camel Manufacturing Company under request for proposals (RFP) No. DLA100-91-R-0594, issued by the Defense Logistics Agency (DLA) to acquire a quantity of general purpose tents. Greenbrier principally argues that the agency improperly evaluated its proposal.

We deny the protest.

The RFP was issued as a 100-percent small business set-aside, and called for fixed-price offers to manufacture a base quantity of 9,700 tents with an option quantity of 9,700 tents. Award was to be made to the firm submitting the proposal representing the best overall value to the government, with technical considerations being more important than price. The offerors' technical proposals were to include detailed information regarding their past performance on all government contracts and significant

commercial contracts for the past 3 years. Offerors also were required to provide detailed manufacturing plans showing how the work called for under the RFP would be integrated into production schedules under current contracts. The RFP contained three equally weighted technical criteria: Quality Assurance Plan, Experience/Past Performance, and Manufacturing Plan. The proposals were to be assigned adjectival ratings of highly acceptable, acceptable, marginally acceptable or unacceptable under each of the three criteria.

DLA received six initial proposals. After the initial evaluation, Greenbrier was rated marginally acceptable under each of the three evaluation criteria. Camel received marginally acceptable ratings under the Manufacturing Plan and Past Performance criteria, and an acceptable rating under the Quality Assurance Plan criterion. Wichita Ponca received ratings of marginally acceptable, acceptable and acceptable, respectively, under these criteria. The agency held discussions with the three firms.<sup>1</sup> Greenbrier's discussions focused primarily on the firm's manufacturing plan and past performance. DLA was concerned with delinquencies under a number of Greenbrier's past and current contracts which, the agency believed, presented the possibility that Greenbrier's production resources might not be available for this requirement.

Greenbrier's response was deemed to adequately outline its quality assurance plan and, accordingly, the firm's rating under Quality Assurance was raised to acceptable. On the other hand, DLA found that, although Greenbrier had provided explanations or mitigating circumstances with respect to some of its delinquent contracts, there were still numerous unexplained delinquencies or delinquencies properly attributable to Greenbrier under various past or current contracts. DLA therefore assigned a final rating of marginally acceptable to Greenbrier under the Experience/Past Performance criterion. DLA also found that the availability of the firm's personnel and equipment for this contract remained in question due to the firm's 75 percent (approximately) delinquency rate under its current contracts, and thus left Greenbrier's marginally acceptable rating under the Manufacturing Plan criterion unchanged.

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<sup>1</sup>In its initial protest, Greenbrier argued that DLA had failed to engage in meaningful discussions. The agency addressed Greenbrier's allegation in its report and Greenbrier failed to provide any response to the agency's position in its comments. Under these circumstances, we deem the issue abandoned. Knoll N. Am., Inc., B-250234, Jan. 11, 1993, 93-1 CPD ¶ 26.

After receiving and evaluating revised proposals from Wichita Ponca and Camel, DLA made upward adjustments to the two firms' technical ratings. Wichita Ponca's Manufacturing Plan rating was raised from marginally acceptable to acceptable under the revised evaluation, leaving the firm with acceptable ratings for all three criteria. Camel's Manufacturing Plan rating also was raised from marginally acceptable to acceptable, leaving Camel with acceptable ratings under two of the three criteria, and a marginally acceptable rating under the Past Performance criterion. Based on these technical ratings, DLA made a split award to Wichita Ponca and Camel as the two technically highest-rated firms, even though the firms' prices were not the lowest received. After learning of the awards, Greenbrier protested to our Office.

Greenbrier argues that the agency improperly downgraded it twice for the same deficiency. According to the protester, DLA improperly considered its past and current performance under both the Experience/Past Performance and Manufacturing Plan criteria. Moreover, Greenbrier contends that many of its delivery delinquencies were not its fault but, rather, were caused by the refusal of DLA's quality assurance representative (QAR) to accept delivery of shipments under various contracts; according to the protester, the QAR's refusal to accept these shipments was due not to any actual defects in the products, but to his failure to approve updates of the firm's quality assurance manual. The protester concludes that its proposal improperly was downgraded based on these delinquencies, and that the agency's cost/technical tradeoff lacked a rational basis in light of these alleged evaluation errors.

The evaluation of technical proposals is a matter primarily within the discretion of the contracting agency, not our Office. Where a protester challenges an agency's technical evaluation, we do not independently reevaluate proposals; our consideration of the matter is limited to determining whether the agency's evaluation is reasonable and consistent with the RFP's stated evaluation criteria. LJC Mechanical Contractors, Inc., B-250792, Feb. 1, 1993, 93-1 CPD ¶ 85.

Preliminarily, there was nothing inherently improper in DLA's considering Greenbrier's delinquencies under two different evaluation criteria. An agency may properly downgrade a firm under more than one criterion based on the same information or deficiency where the deficiency affects the acceptability of the firm's proposal in more than one area. Califone Int'l, Inc., B-246233; B-246233.2, Feb. 25, 1992, 92-1 CPD ¶ 226. Such was the case here. The Experience/Past Performance criterion was directed at assessing offerors' performance during the past 3 years, which was of use to the agency as a general indicator of the

likelihood of satisfactory performance on this contract. DLA concluded that Greenbrier's delinquency problems showed there was a possibility of similar problems on this contract. The Manufacturing Plan criterion, on the other hand, was aimed at determining whether offerors had production capacity that would be available for this contract; offerors were required to show how they would phase this contract into their current contract work. DLA concluded that the high level of current delinquent contracts potentially could impinge on Greenbrier's proposal to shift employees and equipment from its current contracts to perform this contract. We conclude that the two criteria were aimed at assessing different considerations, and that contract delinquencies were relevant to both.

We also find that DLA reasonably downgraded Greenbrier's proposal compared to the awardees' proposals. As for the Experience/Past Performance criterion, in its final evaluation DLA found that, of the 27 contracts reviewed for Greenbrier, 13 were delinquent. Of these 13 delinquencies, 9 were determined partially excusable (that is, not entirely attributable to Greenbrier) and 4 inexcusable. The record also shows that Greenbrier had experienced some quality problems and that, in some instances, warranty claims had been invoked. Camel also had a number of delinquencies and quality problems in its past contracts and, like Greenbrier, had warranty claims invoked. Camel therefore also received a rating of marginally acceptable under this criterion. In contrast, since Wichita Ponca had not experienced any delinquency or quality problems, it received an acceptable rating under this criterion.<sup>2</sup>

We think it is plain that the agency evaluated all three offerors on the same basis under the Experience/Past Performance criterion. Simply, the two firms with prior delinquency problems were downgraded relative to the one firm with no such problems. We therefore have no basis to object to DLA's evaluation in this area.

The agency made a similar relative analysis of the firms under the Manufacturing Plan criterion. Greenbrier proposed to draw the personnel and equipment for this contract from five ongoing contracts. While the agency did not find that this approach was questionable per se, it apparently was

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<sup>2</sup>Greenbrier complains that Wichita Ponca should not have received a higher rating because it has never manufactured the particular tents called for in the RFP. However, the record shows that Wichita Ponca has manufactured numerous textile products of similar complexity. Since the RFP did not require offerors to have manufactured the same item, we see nothing unreasonable in Wichita Ponca's rating.

concerned that it may not be feasible because the five contracts from which resources were to be shifted were approximately 75 percent delinquent; DLA concluded that these delinquencies could have an impact on Greenbrier's available production capacity. In contrast, Camel had no currently delinquent contracts, performance of all its outstanding work was scheduled to be completed prior to the time when production was scheduled for this contract, and it was found to have otherwise allocated adequate equipment and personnel to perform the tent contract on schedule. Similarly, Wichita Ponca had no currently delinquent contracts, and it proposed to set up an entirely separate facility for performing this contract, with equipment and personnel not being used under other contracts; thus, to the extent that it did have ongoing work on other contracts, its scheduling of the work called for under this contract would be unaffected.

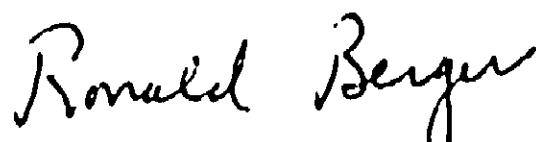
Again, DLA's comparative evaluation was based on a fundamental discriminator: the presence of delinquent contracts which potentially could delay or prevent a shift of currently employed resources for use on the tent contract. Neither of the awardees had current delinquencies that potentially could lead to this problem, and one, Wichita Ponca, had also avoided the potential problem by proposing to perform with resources not currently in use. Greenbrier was in a different position due to its current delinquencies and its proposal to shift resources from delinquent contracts. We see nothing unreasonable in the agency's conclusion that the awardees' proposals therefore were both more advantageous than Greenbrier's under this criterion.

Greenbrier contends that the inexcusable delinquencies under its current contracts are due solely to the QAR's refusal to accept delivery of the end items based on Greenbrier's failure to produce an acceptable quality assurance manual, and that the personnel and equipment under these contracts will in fact be available because production has been substantially completed. Greenbrier's position assumes, however, that the items will be immediately accepted by the government upon completion of the manual. There is nothing in the record that shows Greenbrier's tents already have been found to conform to the quality standards that will be contained in the revised manual, or that acceptance otherwise should be expected to be automatic; indeed, in light of the firm's prior quality problems, there would appear to be no reason to make such an assumption. In any case, given that delinquencies existed, we do not think it was unreasonable for the agency to conclude that the possibility that any further delay in the acceptance process could affect the availability of the resources proposed for

the tent contract made Greenbrier's proposal less desirable than the awardees' proposals.<sup>3</sup>

In view of our conclusions regarding the propriety of DLA's technical evaluations, we have no basis to object to the agency's source selection decisions. Where, as here, the RFP does not provide for award to the lowest price, technically acceptable proposal, an agency has discretion to make award to a technically superior offeror, so long as it determines that the firm's technical superiority is worth the price premium involved and the selection decision is consistent with the solicitation's evaluation scheme. Atlantic Scaffolding Co., B-250380, Jan. 22, 1993, 93-1 CPD ¶ 55. As discussed, DLA's technical evaluation reasonably distinguished between the awardees and Greenbrier based on Greenbrier's past history of delinquent delivery and quality problems, and the delinquencies relating to current contracts from which the firm was to draw personnel and equipment for this contract. DLA determined that the price premium associated with making award to Camel and Wichita Ponca was justified in light of the firms' demonstrated open production capacity; the uncertainties associated with Greenbrier's production capacity, coupled with its past history of delinquencies and quality problems, reasonably led the agency to have some doubt concerning whether Greenbrier could timely perform this contract. DLA therefore reasonably chose to make award to Camel and Wichita Ponca (at admittedly higher prices) in order to assure that contract performance would be timely, and we have no basis to object to DLA's award decisions in view of the RFP's emphasis on technical evaluation factors over price.

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>3</sup>Greenbrier also stated in its proposal that it would hire additional workers and purchase additional equipment if necessary. However, unlike Wichita Ponca's comprehensive proposed plan, this appears to have been intended to supplement Greenbrier's principal approach of shifting resources from other contracts. We do not think this general statement precluded the agency from downgrading the proposal comparatively, on the basis that the principal approach to satisfying the requirement was questionable.